

Comments on FCC – 03-101 by Noel Janda, Comtec Business Systems, Inc.

Re: Comments on the Commission's request for comments on how to limit waste, fraud and abuse.

In the Introduction, Section I, in paragraph 2 on page 3, the Commission previously sought comment “in order to that the benefits of this universal services support mechanism for schools and libraries are distributed in a manner that is fair and equitable and improve our oversight over this program to assure that the goals of section 254 are met without waste, fraud, and abuse.” Furthermore, in the Introduction Section I, paragraph 7, the Commission states that, “We seek comment regarding our existing rules governing the filing of an applicant's technology plan, and the viability of an online computerized eligible services list. We also seek comment on additional measures to limit waste, fraud, and abuse.”

The intent of the e-rate program is to enable schools and libraries to provide their services more efficiently through the use of telecommunications technology including access to the internet. It is not intended to be a gravy train for the “qualified service providers.” In Section I, paragraph 7, the commission seeks comments on additional measures to limit waste, fraud, and abuse. The restriction of access to discounts to only those currently defined as such by the language in place today is contrary to good business logic. Although service providers would prefer to be the only ones able to provide proposals that that use e-rate funds and other subsidies, it ignores the fact that alternatives exist for installation of infrastructure to support the needs of schools and libraries. It is clear that the requirements for telecommunications infrastructure for schools is not a temporary phenomenon, and the current restriction of use of funds is both limiting the options available to users as well as driving up life cycle cost. The need for these services are here to stay, and the requirements for bandwidth will be growing dramatically. Rather than restrict schools and libraries to only the choices given to them by designated service providers, allow them to use traditional business buying criteria in their analysis and purchase decisions. Allow them to shop the market. Otherwise, the result will be a regulated and expensive solution that is not supportable in the long run.

Under Section III, subsection A, paragraph 15, “the Commission concluded that the schools should have the maximum flexibility to purchase the package of services they believe will most effectively meet their needs.” Under Section III, subsection A, paragraph 16, the Commission “invited parties to submit proposals for change that would improve the operation of the eligibility determination process in terms of efficiency, predictability, flexibility, and administrative costs.” In the same section, paragraph 22, referencing the Universal Service Order, “the Commission indicated that an applicant's request for discounts should be evaluated based on cost-effectiveness.” Clearly as stated in the above reference, Congress intended that the schools and libraries should have complete freedom to choose the solution that best fits their needs provided it does so at the least cost. To restrict parties eligible to provide proposals to only service providers as defined in this document, and to further restrict the method of acquisition to leasing, is tremendously wasteful. These connections are as permanent as the buildings they connect. To the extent that a school district owns its facilities, it should be allowed to view the connection between them using the same decision criteria as other investments without their decision being prejudiced in one direction (the most costly) by a subsidy that makes up the difference in the short run.

The technologies that connect campuses and/or connect multiple campuses should not be viewed only from the perspective of a carrier, who may or may not want to make investments that the schools seek. Without the option to consider alternatives to the proposals, the schools will be forced to consider more expensive and potentially less suitable technologies, the only ones offered by a select few incumbent “eligible” companies. As stated in FCC 03-101, schools have very complex and unique requirements, and they should be allowed the maximum flexibility to acquire the best solution for their needs. This means they should be able to use e-rate funds for purchase or lease as they see fit, and they should be able to acquire the most responsible solution from anyone capable financially and technically to provide it, not just “service providers.”

The Commissions new rule changes the acquisition method to only leased and only leasing services from service providers designated as such by the state in which the perform business. This new rule violates the above sections by preventing non-service providers from competing for the business in a fair and equitable

fashion. It runs counter to the intent of Congress and does, in fact, heavily and exclusively designate fund access to a select few (and in many cases, the one). This restriction on competition both reduces the numbers of players allowed to make proposal but also eliminates more cost effective proposals that would otherwise be introduced.

We propose that the language be changed to allow for all reputable companies with expertise and knowledge, regardless of their status as a carrier, service provider or interconnect, be allowed to utilize equally and under the same and fair guidelines all e-rate funds, and that all these entities are eligible to provide proposals to use these funds for backbone infrastructure such as wired or wireless technology connecting different buildings or different campuses. These proposals, which include the purchase and installation of permanent infrastructure, are to be considered the same and equivalent in the bid review process to the services that are normally delivered by the carriers, service providers and LECs using these technologies.

Commercial enterprises are installing their own privately owned metropolitan area networks that bypass the LEC due to the cost savings that they can realize from these investments. Schools and libraries should be given the same access to technology that commercial enterprises enjoy, especially when it drives down the cost of providing the technology to the users. It is in the public's best interest to allow schools and libraries to purchase their own infrastructures when this better serves their interests. To forbid or exclude them from pursuing these avenues on an equal footing contributes significantly to wasting tax payer dollars.

To require that schools only use e-rate funds to lease services for systems with long life cycles only builds an expensive method of communications that is eventually non-supportable. Backbone infrastructure investments by school districts should be viewed the same regardless of the source of the proposal. Private enterprise purchase these technologies (instead of lease) when it is deemed more cost effective to do so. A level playing field should be made available to allow schools to make the most cost effective approach. To allow subsidies for leases and not allow them for purchase of the same infrastructure makes no sense. The rule that forces only leasing is also forcing waste and abuse by its very nature. One thing is for sure, the need for the infrastructure is a permanent part of the education and library landscape. Why force a method of acquisition that does not acknowledge this. Most important, preventing the schools from purchasing their own backbone networks and forcing them to lease them from carriers will add tremendously to the life cycle cost of increasing bandwidth availability to schools and libraries. For example, the current manufacturer estimated useful life of a fiber optic cable is approximately 40 years. The electronics required to "light" up the fiber and provide bandwidth is perhaps 10% of the total investment and may need to be cycled up every 5-7 years (with plunging prices and growing capacity). The economic payback for a school to install its own fiber backbone network compared to leasing bandwidth from a carrier over the lifetime of the network weighs significantly on the side of a purchase decision by the school.

Codifying the 30% policy will further reduce introduction of new services that will become the backbone of future proposals depending on what is defined as eligible services. Provided the definition of services can be set to allow purchase, lease, lease purchase and fiscally funded leases, then codifying policy isn't affected. On the other hand, proposals may include, through misunderstanding of the rules, or through a desire to describe the entire solution, the inclusion of purchased equipment. In addition, the definition of who is qualified to use e-rate funds must be expanded to cover all of the active participants in the marketplace, not just those who are designated as service providers. Many organizations are seeking alternatives to service provider services due to better return for their investment, and schools and libraries should have the same options.

The Commission has commented that the demand for funds is now exceeding supply and that the trend appears to be continuing in this vein. That being the case, it is critical that the funds be used in the most efficient manner. In paragraph 102, the Commission requests comments on how to limit waste, fraud and abuse. If schools are allowed to purchase their own backbone network and to make buy versus rent decisions without restrictions on which method receives a subsidy (e-rate), the investments decisions made will be based on sound business logic. Most schools and libraries are purchased assets owned by the school districts, municipalities and states in which they are located. They are not moving, and it is reasonable to assume that in most cases they would remain in place for the duration of the life of fiber or

alternative network technology that would be used to provide a backbone network. If the lease price makes more sense on its own merits, it will certainly be the method of acquisition used. However, if the service provider faces real competition from alternative sources (not just service providers, but interconnects and others) in which the schools and libraries can choose the best approach to suit their unique requirements (as intended by Congress), then the schools will need to have the choices available to them.

Service providers do not necessarily look at the requirements of a school purely from the perspective of what is best for the schools and libraries. They are looking to leverage their investments with the subsidies that are provided by e-rate. At the same time, however, schools are not currently allowed to go to the open market and request services and products except through a restricted number of channels which may or may not meet their needs. In today's market, there are many alternative sources for services other than traditional service providers. These alternative sources should be allowed to participate. To keep them out drives up costs and endangers long term solutions being implemented that are in the best interest of the schools and libraries.